

The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. See 86 Ill. Adm. Code 495. (This is a GIL).

December 14, 2000

Dear Xxxxx:

This letter is in response to your letter dated October 6, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

We need your help regarding telecommunication taxes or sales taxes related to telephone services resold to consumers.

My client (B) is in the business of reselling telephone time provided by (A) to consumers (D) through various resellers (C). First, B buys phone numbers from A to sell to D via C with a new cellular phone with x number of airtime minutes. Second, B sells prepaid cellular cards to C so that when the customer D needs more airtime minutes, he buys the prepaid cellular card from C that allows him to activate x more minutes on his cell phone.

My client (B) does not charge sales or telecomm taxes to C and does not pay sales tax or telecomm taxes to A. C charges telecomm taxes to D on the airtime sold. For example, 40 minutes of time that is eventually billed by A to B for \$5.00 when used has already been sold on a prepaid card by B to C for \$10.00 who then sells the card for \$15.00 plus telecomm taxes.

The issue comes up because some competitors of C are selling the prepaid card for \$15.00 including taxes. Who then in the chain is paying the taxes? We are looking to make sure we are doing this right and that there is no alternative manner of handling the taxes.

Who should collect the taxes?

What is the impact of the location of B, C or the phone number prefix? B is located in CITY, and the C's are in various Illinois locations including outside CITY. The phone numbers have various prefixes including other than 312.

I also understand there may be a change in the tax treatment of prepaid telephone cards beginning January 1, 2001.

Looking forward to receiving guidance in this matter. Thank you.

The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. See 86 Ill. Adm. Code 495, enclosed. Pursuant to Section 495.100(a), "gross charge" means the amount paid for the act or privilege of originating or receiving telecommunications in this State and for all services and equipment provided in connection therewith by a retailer, valued in money, whether paid in money or otherwise, including cash credits, services and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of material used, labor or service cost or any other expense whatsoever.

Section 2(k) of the Act states as follows:

"Sale at retail" means the transmitting, supplying or furnishing of telecommunications and all services and equipment provided in connection therewith for a consideration to persons other than the Federal and State governments, and State universities created by statute and other than between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries for their use or consumption and not for resale.

35 ILCS 630/8 provides, in part, that "[i]f a person who originates or receives telecommunications in this State claims to be a reseller of such telecommunications, such person shall apply to the Department for a resale number. Such applicant shall state facts which will show the Department why such applicant is not liable for tax under this Article on any of his purchases and shall furnish such additional information as the Department may reasonably require."

Long distance resellers (C) will incur Telecommunications Excise Tax liability when they resell the phone service to consumers (D). Long distance resellers (C) of phone service can provide their vendors (B) with Certificates of Resale and pay no tax to those vendors. In order to certify that these purchases of telecommunications are for resale, long distance resellers (C) must apply to the Department for a resale number. Please note that in your scenario, the vendors (B) of the long distance resellers (C) are also purchasing the telecommunications for resale from their vendor (A). In this case, the vendors (B) should provide (A) with certificates of resale.

Sales of prepaid telephone cards by retailers are currently not subject to Retailers' Occupation Tax. However the Telecommunications Excise Tax consequences from sales of telephone cards by retailers may vary depending upon whether or not the Department deems them to be retailers of telecommunications.

In general, retailers who purchase telephone cards from telephone service providers and then resell the cards to customers for marked-up prices are not responsible for collecting and remitting the tax from their customers. The tax is incurred at the time the telecommunications originate or are received in a taxable manner. The amount of telecommunications charges for which the cards are redeemed by the telephone service providers should include any amount of Telecommunications Excise Tax incurred. The telephone service providers charge the phone calls and the tax against the balance of the cards, as they are responsible for collecting and remitting the tax.

In contrast, retailers that purchase telecommunications units from telephone service providers and sell them at retail to their customers present situations similar to hotels who sell telecommunications services. See Section 495.100. In these cases, the retailers would be required

to register as telecommunications retailers and collect and remit Telecommunications Excise Tax. The tax base would be the amounts charged to card purchasers for the taxable services subsequently provided (i.e., calls that originate or terminate in Illinois). When the cards are sold in Illinois, the Department presumes that the calls will originate or terminate in this State. Retailers purchasing telecommunications units have the burden of establishing that the charges are exempt from Telecommunications Excise Tax. The only way to properly document such exemptions would be through records of the telephone service providers. Therefore, as a practical matter, since the retailers will not know at the time of sale what taxable services cardholders will later consume, retailers should charge the tax on the full sales prices of the cards.

As of January 1, 2001, the taxation of prepaid phone cards will change. Beginning January 1, 2001, prepaid telephone calling card arrangements will be exempt from Telecommunications Excise Tax liability and instead will be taxed as tangible personal property under the Retailers' Occupation Tax Act, Service Occupation Tax Act, Service Use Tax Act, and Use Tax Act. See Public Act 91-0870. Purchasers of prepaid phone cards that intend to resell them after January 1, 2001 must present their vendors with certificates of resale. Illinois law requires a Certificate of Resale to contain the information set out in 86 Ill. Adm. Code 130.1405(b), enclosed. A Certificate of Resale is a statement signed by the purchaser that the property purchased by him is purchased for purposes of resale. Provided that this statement is correct, the Department will accept Certificates of Resale as prima facie proof that sales covered thereby were made for resale. In addition to the statement, a Certificate of Resale must contain:

- 1) The seller's name and address;
- 2) the purchaser's name and address;
- 3) a description of the items being purchased for resale;
- 4) purchaser's signature, or the signature of an authorized employee or agent of the purchaser, and date of signing;
- 5) Registration Number, Resale Number, or Certification of Resale to Out-of-State Purchaser
 - A) purchaser's registration number with the Illinois Department of Revenue; or
 - B) purchaser's resale number issued by the Department of Revenue; or
 - C) a statement that the purchaser is an out-of-State purchaser who will sell only to purchasers located outside the State of Illinois.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.